

No. 12331

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United States  
Court of Appeals  
For the Ninth Circuit.

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CHARLES I. ROSIN,

Appellant,

vs.

J. P. HART, Trustee in Bankruptcy of the Estates  
of International Mining & Milling Co., debtor  
and Mount Gaines Mining Company, debtor,  
and Securities and Exchange Commission,

Appellees.

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Appendix To Brief of Appellant

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Appeal from the United States District Court,  
for the District of Nevada.

JAN 2 1950

PAUL P. O'BRIEN  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

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For Securities & Exchange Commission.

In the District Court of the United States  
for the District of Nevada

No. A 34 A

In the Matter of  
INTERNATIONAL MINING & MILLING COM-  
PANY, a corporation.

No. A 35 A

In the Matter of  
MOUNT GAINES MINING COMPANY, a cor-  
poration.

PETITION FOR ALLOWANCE OF FEES TO  
ATTORNEY FOR STATE TRUSTEES

Chas. I. Rosin respectfully petitions this Court to fix and allow his fee as attorney for the Trustees, acting under the jurisdiction of the Superior Court of the State of California in and for the County of Mariposa, being action No. 1646 therein, and being a prior proceeding of the same subject matter as in this proceeding.

Petitioner is an Attorney-at-law, licensed to practice in all of the Courts of the State of California, and in the District Court of the United States, and has been at all times herein mentioned.

That ever since the appointment of the Trustees by the Superior Court of California, as hereinafter stated, he has been the attorney for said Trustees, acting under the jurisdiction of said Court and has



never been discharged as such and still is such attorney.

That on and before May 9, 1938, there was pending in the said Superior Court of the State of California, in and for the County of Mariposa, an action entitled Andrew N. Logie et al, Plaintiffs, vs. Mount Gaines Mining Co., a corporation, et al, and being action No. 1646.

That on May 6, 1938, he appeared as one of the attorneys on behalf of the defendant corporations, in the trial of the said action and at said time it was suggested by the Hon. J. J. Trabucco, Judge of the said Court, that in view of the conflict between the two factions and two contending Boards of Directors of the corporations involved, that it would be most advisable that Trustees be appointed to take over from the then present management of the corporations, the affairs thereof, and further suggested that the attorneys in the action attempt to agree on an order of appointment for said Trustees and the naming of the Trustees. That the said suggestion of the Court was on a Friday, May 6th, 1938, and the matter was continued until the following Monday, May 9th, 1938, for the purpose of attempting such agreement. That he remained at Mariposa and in and about the Court House during such week and worked consistently over the said week and with C. F. Humphrey, an attorney of San Francisco, and the head and mainspring of the plaintiffs and of one of the Boards of Directors of the corporations involved, in an effort to formu-

late an agreement under which an Order of Appointment of Trustees would be made, the petitioner herein, acting on behalf of the defendant corporations and the said C. F. Humphrey on behalf of the plaintiffs. That by reason of the consistent efforts on behalf of the petitioner, an agreement was reached and signed with the said C. F. Humphrey, which is the agreement upon which the Order of Appointment of Trustees was made at the time the Court resumed on the following Monday, May 9th, 1938, at which time the other attorneys in the action appeared in Court and joined in the said agreement. That at that time the said C. F. Humphrey was in charge of the affairs of the corporations and its funds and was lavishly expending money on the account of the corporations for causes, which, in the opinion of the petitioner, were not proper charges against the corporations, and the appointment of the said Trustees took the affairs of the corporations out of the hands of the said C. F. Humphrey and stopped the flow of moneys from the corporation under the direction of said C. F. Humphrey. That at said time, there being no Trustees yet appointed, petitioner does not contend that he is entitled to fees as attorney for Trustees for such services, they being on behalf of the corporations directly, and the petitioner has filed no separate claim for himself as attorney for the corporations in the said action above mentioned, he asks that the services so rendered by him be considered in support of the good faith and diligence shown by him throughout his capacity as attorney for the Trustees.

Another matter in which petitioner rendered service to the corporations before his appointment as attorney for the Trustees, is at a stockholder meeting of the International Mining & Milling Co. held at Las Vegas, Nevada, on January 18, 1938. At said stockholder's meeting upon a counting of the ballots, Mr. C. F. Humphrey learned that he held an insufficient number of proxies to control the meeting. In order to retain his grasp on the affairs of the corporation, he caused an affidavit to be prepared, which he presented to the Superior Court Judge at Las Vegas, Nevada, as a basis for an order ex-parte, denying Mr. A. G. Ulsing the right to vote his stock at said meeting, which order was then issued and immediately served on the said A. G. Ilsing. Believing that it would be unjust to proceed with the election at said meeting before termination of the right of the said A. G. Ilsing to vote the said stock, the petitioner, who was present at said meeting in Las Vegas, immediately prepared a further affidavit, which was presented to the Court, upon which the Court made a further order restraining the holding of the said stockholder's meeting until a determination of the ex-parte order, wherein A. G. Ilsing was denied the right to vote his stock. By such action on the part of the petitioner, C. F. Humphrey was prevented from obtaining legal control of the Board of Directors at said meeting. Petitioner has not been compensated by anyone for any of the services above mentioned and the same is stated to familiarize the

Court with some of the services rendered by him on behalf of the welfare of the corporations before his appointment as attorney for Trustees.

That, as above set out on May 9, 1938, an Order for Appointment of Trustees to take over the affairs of the Mount Gaines Mining Co. and the International Mining & Milling Co., was made by the Hon. Judge Trabucco, Judge of the Superior Court of California, in and for the County of Mariposa, in Action No. 1646, and in connection with said Order, C. B. Buxton, H. K. Trask and A. V. Udell were appointed as the Trustees at a salary of \$450.00 per month for the three Trustees plus expenses incurred by them. That upon such appointment, the petitioner discussed with said Trustees the nature of their duties, and it was agreed among them that C. B. Buxton and H. K. Trask would attend to the business affairs of the corporations, and A. V. Udell, who was an experienced mining man and resided in Mariposa, should look after the mining operations. That a few weeks thereafter C. B. Buxton and H. K. Trask met at the office of the petitioner, for the purpose of discussing the affairs of the corporations, and at said time the petitioner was employed and appointed by the Trustees as attorney for Trustees during the entire trusteeship or until substituted by other counsel. That from said time, petitioner has continued to act for the Trustees in the said proceeding and has never been discharged or substituted.

That the office of the petitioner handled all matters as pertained to the affairs of the corporations, excepting that the office maintained by the corporations at the mine in Mariposa County, was in charge of actual mining operations and no office expense was incurred by the Trustees, their business being taken care of through the petitioner's office, except that H. K. Trask did carry on a correspondence at his home with various stockholders who were interested as to the status of their investment.

That during the time from the appointment of the Trustees by the Superior Court of California and until petition was filed in the United States District Court in the above entitled matter, a large share of petitioner's time and the time of his office, was devoted to the affairs of the Trusteeship he represented, and there were at all times various matters in said Trusteeship that required his attention. That the services so rendered was a continuing service from the time of his employment as attorney, until the affairs of the corporations were taken over by this Honorable Court. That during said time, the petitioner had associated with him in his office, another attorney to assist him in the routine business of his office, permitting petitioner to devote the necessary time required to the affairs of the Trusteeship and the corporations involved. That upon the said affairs of the corporations being taken over by this Honorable Court, the petitioner has found such assistance unnecessary and has dispensed with the said services of the said associate



attorney. That in addition to taking charge through his office of the routine matters with respect to the Trusteeship and in his capacity as attorney for the Trustees, such as conferences, correspondence and matters of similar nature, it became necessary for him and he did appear in Court on a number of matters on behalf of the Trustees.

That after the appointment of the Trustees herein, the petitioner discovered that C. F. Humphrey, one of the principal land owners of the Mount Gaines Mine, had been prevailing upon the Trustees to reform the lease on the property by deleting the right of the corporation to purchase his interest out of the royalty payments and that he persuaded some of the Trustees to conform to his wishes, due to his insistence that it was the most advisable thing for the corporation to do. That the petitioner upon learning of the state of the facts existing and the effectiveness of the persuasion of C. F. Humphrey on the Trustees, spent considerable time with the said Trustees in enlightening them of the fact that such cancellation of the present lease would be of great disadvantage to the corporations and finally convinced the said Trustees that the purpose in the land owners attempting to cancel out the right of option was only for their own benefit, so that they may reserve for themselves the right forever, so long as the mine operates to collect royalties many, many times the total amount of the purchase price. That at the then rate of production at the said mine, the royalties paid for

a period of approximately eighteen months were sufficient to purchase a three-fourths land owner's interest in the said mine, to-wit: the sum of Fifty Thousand (\$50,000.00) Dollars, and save the corporations thereafter from being required to pay any royalties whatsoever thereon. That, at about the time petition in the matter was filed in this Court, the Trustees were contemplating such arrangements.

That having failed in deleting the option clause from the lease by obtaining the consent of the Trustees thereto, C. F. Humphrey, who controlled at that time a purported Board of Directors of the corporations here involved, was about to take action through the said purported Board of Directors in agreement with himself as the said land owner, to cancel the lease on the mine, and were it not for the prompt action on the part of the petitioner, petitioner believes that the purported Board of Directors would have cancelled out the present lease with the land owners, resulting in either the loss of the lease or in extended litigation with reference to such actions. That in the opinion of the petitioner, the lease on the property of the corporations is the most valuable and only substantial asset of the corporations.

That to forestall such action the petitioner immediately communicated with persons who had knowledge of the impending scheme of C. F. Humphrey, and consulted with the Trustees, and was advised by them to proceed with such action as may be necessary to save the lease to the corporations.

That petitioner prepared and on September 10th, 1938 filed in the Superior Court the necessary affidavits and motions, obtained from the Court a Restraining Order, and caused the proceeding against C. F. Humphrey to be set for trial. That the said C. F. Humphrey thereafter proceeded with a Motion to strike the said Order to Show Cause against him. That petitioner appeared in the Superior Court at Mariposa and on a hearing of the matter by the Court, the Motion of C. F. Humphrey was denied, and the said C. F. Humphrey was by the Court restrained from taking action to cancel the lease through his purported Board of Directors.

That the petitioner herein discovered that numerous charges on account were being made against the corporations by C. F. Humphrey acting through his Board of Directors. That the order appointing the Trustees never intended to permit any other persons, excepting the Trustees, to be empowered to make charges or incur liabilities against the corporations, and so as to protect the assets of the corporations and preserve the same, the petitioner herein moved the above entitled Court for an Order to Restrain such persons from incurring liabilities and charges against the corporations. That petitioner appeared in Superior Court at Mariposa and after a hearing had thereon, in October 4th, 1938, the Court made its order restraining the Humphrey Board of Directors from holding meetings or incurring liabilities.

That C. F. Humphrey being unsuccessful in ob-



taining a cancellation of the lease, and having been restrained through the efforts of the petitioner from having his board of directors resolve to cancel the lease, and being restrained from further direction of the matters of the corporations, proceeded on January 14th, 1939 with a Motion to Discharge the Trustees. That after due preparation for the proceeding, the petitioner left for Mariposa, and trial was had on the said Motion, and, after trial on the matter and submission to the Court, on February 6th, 1939 the Court denied the Motion, and the Trustees continued to act in their capacity as such. That thereafter in an effort to regain control of the corporation, C. F. Humphrey caused a Motion to be filed and served on petitioner, to set aside the order appointing the Trustees. That petitioner prepared to resist the said Motion, which was set for hearing for March 20th, 1939, and left for Mariposa for the said hearing, for said date where the said Motion was heard and denied by the Court. There was also filed in the said Court an Order to Show Cause against the Trustees why they should not pay the claim of John L. Reimer, and copy served on petitioner, and set for hearing on April 3rd, 1939, at which time the same was continued to a later time and time set for the taking of depositions. That no Order was granted for the payment of the said claim.

That the petitioner learned that C. F. Humphrey, acting in concert with others, had encouraged actions to be filed against the corporations the sub-

jects of the trust, and had arranged for service of process to be made on his board of directors and that judgments were about to be entered against the corporations on said service. That petitioner immediately prepared the necessary affidavits and petitions and appeared before and presented the same to the Court and on June 3rd, 1939 obtained an immediate Order from the Court for the said members of the Humphrey board of directors and officers to immediately notify petitioner, when process has been served upon them, and on June 12th, 1939, the said Order was made permanent.

That on the morning of June 22nd, 1939, petitioner learned that a deposition was to be taken at the office of Attorneys Redwine and Redwine in Los Angeles, of A. G. Ilsing. Being interested to learn the nature of the proceeding, petitioner attended the taking of said deposition and learned for the first time that an Action had been filed by Arthur J. Edwards and another by John L. Reimer against the corporations, without any service being made of process on the Trustees, and that the Humphrey officers, with whom the said plaintiffs were friendly, had been served with the process, and that trial was set for five days later, June 27th, 1939. After conferring with one of the Trustees, the petitioner immediately arranged to leave for San Francisco where the trial was to be had, and on the morning of the trial, appeared in Court, much to the surprise of both the plaintiffs and C. F. Humphrey and his attorney, who appeared on behalf of the corpora-

tions through the Humphrey board of directors. At the opening of the trial, petitioner herein informed the Court of the fact that the person appearing for defendant corporations, had no authority to do so, as the said corporations were in Trusteeship, and that the Trustees had no prior knowledge of the action, and requested the Court to postpone the trial until the Trustees familiarize themselves with the proceedings, which the Court denied, stating that as the record stood before the Court, the parties to the action were properly represented, and the trial proceeded, in which the petitioner was permitted to participate but being entirely unfamiliar with the subject of the actions, was not prepared to properly defend it. No serious effort was made to defend the action on behalf of the corporations and judgment was stipulated to by the parties of record.

Upon returning to Los Angeles from San Francisco, petitioner learned that the Humphrey group had caused a petition in Bankruptcy to be filed before this Honorable Court.

In addition to the above, in matters before the Superior Court at Mariposa, the petitioner, after many days of work on the same, prepared an account of the Trustees, which was filed in Superior Court at Mariposa, and petitioner appeared in said Court therein, and was approved on October 3rd, 1938. That in order to save expense of auditors, the petitioner worked on the same with only the aid of the bookkeeper at the mine.

That After the filing of the petition in this action, the petitioner prepared petitions, which he presented to the Superior Court at Mariposa, for Leave to File Final Accounting of the Trustees. That on February 28th, 1944, petitioner appeared in said Court with said petition but the Court refused to entertain the same, for the reason stated that as the matter is now in the United States District Court, he did not feel inclined to accept any further accounting in his Court.

That on June 1947 a Motion by A. G. Ilsing was made and served on petitioner, as attorney for Trustees, to dismiss the Action pending in the Superior Court at Mariposa. That petitioner was of the opinion that, as the subject matter was pending in the District Court of the United States, and the state trustees had not been discharged, it was presumptuous to anticipate how the said District Court would finally dispose of the matter, and that the said District Court could, if it so desired, order further proceedings through the State Court, and that final disposition of said action should await the pleasure of this Honorable Court. The petition, as filed, stressed the statute, regarding dismissal of actions after lapse of time and not proceeding to trial, and it was necessary for petitioner to fully brief the law on the subject which he did, and which required several days. That he appeared before the Superior Court at Mariposa on June 28, 1947, and after defending the Motion before the said

Court, the same was denied, and the action there is still pending.

That during the latter part of January 1939, petitioner discovered that an Action had been filed against the Mount Gaines Mining Co. in the Superior Court of California at Mariposa by one D. R. Gustaveson, in which it was sought to cancel out the lease on the mine of the said corporation. That no service had been made on the Trustees herein, and in order to protect the Trustees and the said corporation from default by service on the officers of one of the Boards of Directors of the corporation, who also desired a cancellation of the said lease, the petitioner caused copies to be made of the said complaint, which was approximately twenty pages in length, and had several conferences with the Trustees, with regard to filing an Appearance thereon, and it was finally determined that an Answer and Cross-Complaint be filed by the Trustees. That in pursuance thereof, petitioner prepared an eighteen page Answer and Cross-complaint to the said Action, the preparation of which took several days, and mailed copy thereof to plaintiff's attorneys, and then proceeded to file same with the clerk of the Court, upon which petitioner was informed that the plaintiff had dismissed the said action.

That in the course of his duties, petitioner discovered that large sums of money had been spent by C. F. Humphrey for which the corporations were charged, for which the corporations had paid out moneys, which charges were not proper charges



against the corporations, and for which the corporations should be reimbursed. That the petitioner had a number of conferences with regard to the same, and spent considerable time in going over such accounts of charges and moneys paid, and obtained the consent of the Trustees to bring an action for the recovery of said moneys, amounting to many thousands of dollars, and obtained, on motion, an Order from the Court, permitting such action to be filed, and in pursuance thereof, an Action was prepared, Complaint filed and Summons issued, which Action was later dismissed upon the advice of the Court. That by reason of the services rendered by the petitioner, in discovering the said claims of the corporations against such persons, after dismissal of the said Action, another Action, based upon such information obtained by the petitioner, was filed by an independent stockholder of the corporations.

That there existed a number of undisputed claims against the corporations, which were required to be paid and for which there was sufficient moneys on hand to pay the same. That the petitioner, with the assistance of the Trustees, prepared such list of claims, which should be paid, and arranged for the payment thereof at discounts, saving to the corporations approximately Two Thousand (\$2,000.00) Dollars in such accounts, all of which discounts the Trustees obtained, not because of legal right thereto, but because of the proper and efficient manner in which the same was handled by the petitioner in collaboration with the Trustees. That at the time,

there stood against the corporations, a judgment in the sum of approximately \$1,360.00, together with considerable interest, which judgment was then final. That the petitioner, in collaboration with the Trustees, took this matter up with the attorneys for the judgment creditor, and obtained a complete satisfaction of the said judgment, for the sum of One Thousand (\$1,000.00) Dollars. That petitioner appeared in the Superior Court at Mariposa on December 18, 1938, for approval of said compromise, and the same was approved.

That at the time that the Trustees herein took charge, the corporations were heavily in debt on accounts of long standing and were threatened with attachments and suits and, in addition thereto, were indebted on delinquent royalties and in considerable sums on current accounts. That during the period of Trusteeship, most of the said delinquent accounts and indebtedness, which were undisputed and uncontested, have been paid and satisfied; that accounts current were paid; and, in addition thereto, the accounts current, accruing during the Trusteeship, were paid as they accrued and became due; and that the time that the United States District Court took charge of the said corporations, under the Petition filed therein, the Trustees had on hand a substantial cash reserve. That if the said Petition in the United States District Court had not been filed, petitioner believes that the Trustees were prepared, within a brief time, to report to the Court

that the corporations were in good standing and that their duties had been fulfilled.

That during all the said period of time, towit, between May 9, 1938 and June 30, 1949, being the period of active operation by the Trustees, acting under the jurisdiction of the Superior Court of California, at Mariposa, in the Action pending before said Court, to-wit, #1646, a number of appearances in Court were had, at which time petitioner appeared in addition to the appearances above referred to, on a number of said occasions; on Motion of plaintiff, the proceedings were continued, the last time being June 3, 1939.

That the matters above referred to and appearances before the Court, required preparation, some of which were extensive, requiring a great number of days, and all of such appearances required traveling to Mariposa, a distance of 350 miles and return, and on each of said occasions, petitioner was absent from his office a number of days.

That in addition to court appearances and preparation therefore, petitioner was occupied almost daily with various matters affecting the business of the Trusteeship, and devoted a great portion of his time thereto, as hereinabove first stated.

That the Trustees, whom petitioner was representing, were allowed during their term in office, a total of \$5,850.00 in fees, together with their expenses. That most of the business of the Trustees was carried on by and through and at the office of the petitioner, the Trustees having no other office



on their own account. That petitioner believes that the sum of \$10,000.00 is a reasonable allowance for his services in the Superior Court action, and prays that the same is allowed to him.

That upon the filing of the Petition in Bankruptcy in this proceeding, and for authority for the Humphrey board of directors to remain in possession and control of the affairs of the corporation, at a time when said board was neither in possession nor control, petitioner herein prepared on behalf of C. B. Buxton, the only remaining active Trustee, an Answer and Objection to said Petition, consisting of some thirteen pages, which was filed, setting out the Objection to the proceeding and the falsity of the allegations in the petition, to the effect that the Humphrey board was in possession or control of the affairs of the corporations and objecting to permitting the said board to gain control thereof; that the time spent in preparation for the filing of the said Answer and Objection consumed the major part of a week; in addition thereto, petitioner spent considerable time in conferences with C. B. Buxton, the Trustee, and other parties interested in the proceeding. That petitioner appeared in the above entitled Court on the hearing of the said petition in the month of August, 1939, and was absent from his office a considerable portion of a week in the course of said appearance.

That on November 27th, 1939, the petitioner appeared in the above entitled Court, in connection with a petition filed by him for Leave to File the

Accounting of the State Trustees in the said Court, and the preparation for same and appearance before this Honorable Court, the travelling to and fro, consumed a considerable portion of a week.

That in 1940, the exact date of which petitioner does not have at hand, a Petition was filed in this Court to remove petitioner as attorney for State Trustees, that the matter was heard by this Honorable Court, and petitioner appeared thereon and the Motion was denied. The petitioner spent several days in preparing counter affidavits, travelling from Los Angeles to, and returning from, this Honorable Court and appearing thereon.

That during 1940, the exact date of which petitioner does not have any record, he appeared before this Honorable Court, with reference to proceeding, involving the account of C. F. Humphrey, in connection with his operations before the filing of this matter in Court.

That during the pendency of this proceeding, the petitioner has, from time to time, received notices from the clerk of the Court, with regard to matters pending, but has not appeared on most of said proceedings for the reason that he did not desire to incur charges, fees or expense therein when he did not believe his appearance necessary.

That petitioner believes that the fee for his services in this proceeding rendered as attorney for the State Trustees, is reasonable, in the sum of One Thousand (\$1,000.00) Dollars.

Petitioner prays that he be allowed, as fees as attorney for Trustees for services rendered by him

as such, the sum of \$10,000.00 as hereinabove set out, and that he be allowed the further sum of \$1,000.00 for services rendered by him as attorney for State Trustees before this Honorable Court, and being a total fee in the sum of \$11,000.00, and that the fee heretofore paid to him, on account in the sum of \$500.00, be credited on account thereof.

Petitioner herein states that no agreement or understanding exists between himself and any other person for any division of compensation to be allowed to him or heretofore allowed him, and further states that no beneficial interest, either direct or indirect, has been acquired by him or his account in any claims or stock of the debtor corporation herein, after the commencement of the proceedings herein, or the proceedings in the Superior Court of the State of California in which he acted as attorney, and which these proceedings supercede.

/s/ CHAS. I. ROSIN,  
Petitioner.

State of California,  
County of Los Angeles—ss.

Chas. I. Rosin, being first duly sworn deposes and says that no agreement or understanding exists between himself and any other person, for any division of compensation to be allowed to him or heretofore allowed him.

Deponent further says that no beneficial interest, either direct or indirect, has been acquired or transferred by him or for his account in any claims or

stock of the debtor corporation herein, after the commencement of the proceedings herein, or the proceedings in the Superior Court of the State of California, in which he acted as attorney, and which these proceedings supercede.

/s/ CHAS. I. ROSIN.

Subscribed and sworn to before me this 15th day of February, 1949.

[Seal] /s/ IRVING E. TARSON,  
Notary Public, Los Angeles County, California.

State of California,  
County of Los Angeles—ss.

Chas. I. Rosin, being by me first duly sworn, deposes and says: that he is the petitioner in the above entitled action; that he has read the foregoing petition for allowance of attorney fees and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ CHAS. I. ROSIN.

Subscribed and sworn to before me this 15th day of February, 1949.

[Seal] /s/ IRVING E. TARSON,  
Notary Public in and for the County of Los Angeles, State of California.

Affidavit of service by mail attached.

[Endorsed]: Filed February 21, 1949.

[Title of District Court and Causes.]

SUPPLEMENT TO PETITION FOR ALLOW-  
ANCE OF FEES TO ATTORNEY FOR  
STATE TRUSTEES

Chas. I. Rosin, petitioner, having heretofore filed his petition for allowance of attorney fees as attorney for State Trustees, respectfully supplements said petition and attaches hereto a copy of a letter from the Judge of the Superior Court of the State of California, in and for the County of Mariposa, marked as Exhibit A which he has received since the filing of the petition, in support of his allegations that he has at all times been and still is the attorney for the State trustees, and has rendered valuable services to said trustees and the corporation.

/s/ CHAS. I. ROSIN,  
Petitioner.

## EXHIBIT A

The Superior Court, Mariposa County  
Andrew R. Schottky, Judge  
Mariposa, California

San Francisco, Cal.,  
February 17, 1949

Mr. Chas. I. Rosin,  
Attorney at law,  
756 South Broadway,  
Los Angeles, Calif.

My dear Mr. Rosin:

Your letter of February 4th was delayed in reaching me as I have been assigned to preside in the Superior Court in San Francisco.

I am very much interested to learn that a plan for reorganization of the Mount Gaines Mining Company has been approved by the U. S. District Court in Nevada and will be interested further in learning the details of the reorganization as the mine is in Mariposa County.

I sincerely hope that in the allowance of fees to the various attorneys you will not be overlooked as I know that you represented the Trustees when the matter was in my Court, and that you spent considerable time protecting their interests and the interests of the corporation. If it were in my power I would see to it that you were substantially compensated for the services you performed, and I

feel that it would not be just to ignore your claim for compensation.

I am

Yours very truly,

/s/ ANDREW R. SCHOTTKY,

Judge of the Superior Court.

ARS:H

State of California,  
County of Los Angeles—ss.

Chas. I. Rosin being by me first duly sworn, deposes and says: that he is the petitioner in the above entitled action; that he has read the foregoing supplement to petition and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ CHAS. I. ROSIN.

Subscribed and sworn to before me this 23rd day of February, 1949.

[Seal]      /s/ IRVING E. TARSON,  
Notary Public in and for the County of Los Angeles, State of California.

Affidavit of service by mail attached.

[Endorsed]: Filed February 26, 1949.



## ROSIN EXHIBIT No. 1

In the Superior Court of the State of California  
in and for the County of Mariposa

No. 1646

ANDREW N. LOGIE, et al,

Plaintiffs,

vs.

MOUNT GAINES MINING COMPANY, et al,  
Defendants.

ORDER APPOINTING TRUSTEES  
PURSUANT TO STIPULATION

Upon stipulation of the parties to the above-entitled action, and the Court having approved the stipulation, and having determined that it is to the best interests of all parties concerned, it is hereby Ordered, Adjudged and Decreed:

That H. K. Trask, C. B. Buxton and A. V. Udell be, and they hereby are appointed Trustees, pursuant to, and subject to all the terms and restrictions of said stipulation hereto attached, and with all the powers and duties therein specified, upon qualifying and executing the bonds therein required.

It Is Further Ordered, that all persons be and they hereby are restrained from interferring with



Exhibit No. 1—(Continued)

the possession or control of all property in the possession or under the control of the Trustees.

Dated: May 9, 1938.

J. J. TRABUCCO,

Judge of the Superior Court.

[Title of Superior Court and Cause.]

STIPULATION

It is hereby stipulated by and between the above-named plaintiffs and defendants through their respective attorneys of record in connection with the above-entitled action, as follows:

I.

H. K. Trask, designated by the plaintiffs above named, and C. B. Buxton, designated by the defendants above named, and a third person to be designated by the Judge of the above-entitled Court shall be and constitute a Board of Trustees to take possession of all the assets of the International Mining & Milling Company, and the Mount Gaines Mining Company, under and by virtue of an order of the above-entitled Court, and hold possession and control of all said assets as trustees under the supervision and control, and subject to the jurisdiction and orders of the above-entitled Court, for the purpose of paying in full the existing cred-

## Exhibit No. 1—(Continued)

itors of said corporations, upon the terms and under the restrictions as herein set forth.

## II.

The trustees shall hold and preserve said property and operate the Mount Gaines mine for the purpose of the payment of operating expenses and royalties, then creating a reserve of Five Thousand Dollars (\$5000.00) for unforeseen emergencies, and thereafter to the payment of creditors. The said trustees shall give no priority to any creditor or creditors but all shall be paid pro rata, except as to such payments as may be made under order of this Court.

## III.

No salaries shall be paid to any officer or director of either corporation or to any other person except to the trustees to be appointed in accordance with this stipulation, and to such other persons who are actually employed in the operation of the mine including the Superintendent and necessary office help.

## IV.

No member of the Ilseng or Humphrey families shall be employed by the trustees in any capacity in or about the operation of the Mount Gaines mine.

## V.

The compensation of the trustees shall not exceed the sum of One Hundred and fifty Dollars (\$150) per month to each of them, and shall re-

## Exhibit No. 1—(Continued)

ceive their necessary traveling and other expenses necessary to the performance of their duties as trustees, to be paid only upon presentation of itemized statements submitted to and approved by the Court.

## VI.

The trustees shall receive all proceeds from the operation of the Mount Gaines mine and all other sources, and no moneys shall be disbursed except upon checks signed jointly by H. K. Trask and C. B. Buxton, or jointly by the superintendent of the Mount Gaines mine and either of the said trustees, H. K. Trask or C. B. Buxton.

## VII.

No indebtedness or liability shall be incurred by the trustees except the ordinary expenses and charges incidental to the operation of the mine, except upon the order of this Court.

## VIII.

There shall be no personal liability upon any of the trustees either jointly or severally, except for malfeasance, and all persons dealing with the said trustees shall do so with the distinct understanding that any and all contracts made with the trustees shall bind only the assets of the corporations or either of them, and shall create no personal liability against the trustees.

## Exhibit No. 1—(Continued)

## IX.

Each trustee shall file with the Clerk of this Court a bond in the sum of Five Thousand Dollars (\$5000.00) for the faithful performance of his duties, executed by a reputable surety company, to be approved by the Court. The costs of such bonds shall be paid from the funds of the Corporation.

## X.

All pending litigation in which either of the corporations, or either corporation is a party shall be suspended during the trusteeship herein created, except upon written order of this Court after ten days' notice given to the respective parties to this action. No new litigation shall be commenced by the trustees or by either of the two corporations unless the trustees deem it necessary to protect the assets of either of the corporations and then only after having first secured the written approval of this Court.

## XI.

None of the parties to this action, nor the officers or agents of either of the two corporations, nor the trustees shall circularize the stockholders of either corporation, except that the trustees may as soon as convenient after their appointment address a circular letter to the stockholders informing them of the creation of this trusteeship and its purposes, and from time to time as frequently as they deem it advisable they may send out a financial statement.

## Exhibit No. 1—(Continued)

## XII.

The annual meeting of stockholders of International Mining & Milling Company shall be adjourned sine die, and no new stockholders meetings shall be called by any of the parties to the above-entitled action or any of the trustees, until after the trusteeship herein created is terminated.

## XIII.

The trustees shall prepare a set of rules for their guidance, setting out their duties and the duties of the individual trustees, which set of rules shall be mandatory upon the trustees upon approval of the Court and the same shall be filed with the Clerk of the above-entitled Court.

## XIV.

The trusteeship herein created shall continue until all creditors of the two corporations are paid, or until terminated by order of Court.

/s/ WILLIAM P. HUBBARD,

/s/ JAMES H. HOGIN,

Attorneys for Plaintiffs.

/s/ W. W. KAYS,

By CCK

/s/ CHESTER C. KEMPLEY,

/s/ CHAS. I. ROSIN,

Attorneys for Defendants.

Exhibit No. 1—(Continued)

/s/ A. G. ILENG,

/s/ C. F. HUMPHREY,

/s/ H. K. TRASK,

Trustee.

/s/ C. B. BUXTON,

Trustee.

The foregoing instrument is a correct copy of the original on file in my office.

Attest: June 19, 1939.

[Seal]: /s/ J. E. GALLISON,

County Clerk and ex-officio Clerk of the Superior Court of the County of Mariposa, State of California.

[Endorsed]: Filed April 21, 1949. U.S.D.C.

ROSIN EXHIBIT No. 2

Superior Court Chambers

Mariposa County

Joseph J. Trabucco, Judge

Mariposa, California

May 25, 1938.

My Dear Mr. Rosin—

Your letter of the 21st inst., regarding attorneys' fees, received. The Trustees have no money on hand, hence, it would not be advisable to make any orders respecting attorneys' fees at this time.

When there are funds in the treasury, I will make an order allowing attorneys' fees on account.

With all good wishes, I am,

Yours very truly,

/s/ J. J. TRABUCCO.

[Endorsed]: Filed April 21, 1949.

## ROSIN EXHIBIT No. 4

In the Superior Court of the State of California  
in and for the County of Mariposa

ANDREW N. LOGIE, et al.,

Plaintiffs,

vs.

MOUNT GAINES MINING CO., et al.,

Defendants.

## ORDER

The above-entitled matter having come up before this Court on the 3rd day of October, 1938, all parties being present in Court and represented by Counsel, and the Court having had presented to it the following matters and motions and the same having been argued and submitted.

Therefore, It Is Hereby Ordered, Adjudged and Decreed:

That the motion of Trustee herein to restrain the Directors and Officers of the International Mining and Milling Co. and the Mount Gaines Mining Company, is hereby granted as follows:

The Directors and Officers, of the International Mining & Milling Co., and of the Mount Gaines Mining Company and each of them, are hereby restrained from incurring any liability for or on behalf of either of said corporations, and from obligating either of them in any manner, and more particularly from taking any action on behalf of



either of the corporations affecting the rights of said corporations under the lease on the Mount Gaines mine, more particularly referred to in the pleadings in this action, and from cancelling or amending the same, and from entering into any lease superseding the present lease.

It is further Ordered, that the motion of the Trustees to file suit for Declaratory Relief, seeking an interpretation of the Mount Gaines lease, is denied without prejudice.

It is further Ordered that the Accounting and Report of the Trustees, as presented to the Court be filed, as approved by the Court.

It is further Ordered that Chas. I. Rosin, and H. H. Carleton, attorneys for Trustees, are allowed and granted fees on account, as follows: to Chas. I. Rosin, the sum of Three Hundred Dollars, to H. H. Carleton, the sum of Fifty Dollars.

**J. J. TRABUCCO,**  
Judge.

[Endorsed]: Filed April 21, 1949. U.S.D.C.

In the District Court of the United States  
for the District of Nevada

No. A-34-A

In the Matter of

INTERNATIONAL MINING & MILLING COM-  
PANY, a Corporation,

Debtor,

In Proceedings for Reorganization of a Corpora-  
tion Under Chapter X.

No. A-35-A

In the Matter of

MOUNT GAINES MINING COMPANY, a Cor-  
poration,

Debtor,

In Proceedings for Reorganization of a Corpora-  
tion Under Chapter X.

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER ON APPLICATIONS  
FOR COMPENSATION

Applications for the allowance of compensation and reimbursement for expenses incurred to February 28, 1949, in these proceedings came on to be heard before the undersigned Judge of the above-entitled court on the 20th day of April, 1949, pursuant to the provisions of the Order Confirming Plan of Reorganization, Approving Directors and Voting Trustees and Directing the Matter of Fur-

ther Proceedings, entered January 17, 1949. Notice of said hearing was duly given to the persons and in the form and manner directed by this court in its Order Directing Notice of Hearing on Applications for Compensation and Reimbursement for Expenses entered on the 25th day of March, 1949. The hearing proceeding on the 20th, 21st, 22nd and 23rd days of April, 1949, and thereafter was resumed pursuant to continuances on May 16, 1949, and June 13, 1949.

Applications for compensation and reimbursement were presented for consideration by the following applicants:

John P. Thatcher, as counsel for the Trustee, appearing personally.

F. E. Braucht, as special counsel for the Trustee, not appearing but it having been stipulated that his application might be considered on the facts alleged therein without the necessity of evidence in support thereof.

Charles I. Rosin, as attorney for State Court Trustees, appearing personally.

George Halverson, as attorney for a creditor and stockholder and certain other parties, appearing personally.

William B. Mead and H. H. Atkinson, as attorneys for debtors and the Stockholders' Protective Committee, appearing personally.

A. G. Ilseng, a creditor and stockholder, appearing personally and through George Halverson his attorney.

Arthur J. Edwards, as a creditor and as counsel for the Creditors' Protective Committee and individual creditors, appearing personally.

John L. Riemer, as a creditor and Chairman of the Creditors' Protective Committee, appearing personally and through Arthur J. Edwards, his attorney.

Chester C. Kempley, as a creditor and as attorney for a group of stockholders and as counsel for the debtor corporations, appearing personally.

James T. Boyd, as counsel for the Trustee, appearing personally.

Luther Elkins, as counsel for the Stockholders' Protective Committee, appearing personally.

Arthur F. Lasher, as Referee and Special Master, appearing personally.

James P. Hart, as Trustee, appearing personally and through John Halley, his attorney.

Griswold & Vargas and Royal A. Stewart, as special counsel for the Trustee, appearing through Royal A. Stewart.

Hazel B. Hubbard, as surviving spouse of William P. Hubbard, deceased, a creditor, appearing through Arthur J. Edwards, her attorney.

J. W. Warford, as Referee in certain prior State Court proceedings, appearing through Arthur J. Edwards, his attorney,

And the Securities and Exchange Commission, appearing through W. S. Tucker, its attorney, and witnesses having been sworn and examined and testimony having been introduced and considered, the court hereby makes the following:

## I.

### Findings of Fact

These proceedings were instituted by the simultaneous filing of voluntary petitions under Chapter X of the Bankruptcy Act on June 29, 1939, by International Mining & Milling Company and its wholly-owned subsidiary Mount Gaines Mining Company, a Nevada corporation. On August 11, 1939, James P. Hart was appointed and qualified as trustee of the estates of both debtor corporations and has retained these offices to the present time. The two proceedings have been treated by the court and parties in effect as a single consolidated proceeding.

## II.

International Mining & Milling Company was capitalized at \$3,000,000 represented by 1,250,000 authorized shares of Class A stock and 750,000 authorized shares of Class B stock, all having a par value of \$1.00 per share, of which approximately 1,569,749 shares of Class A stock and 386,612 shares of Class B stock were issued and out-

standing in the hands of approximately 2100 holders at the time of the institution of these proceedings.

### III.

The principal asset of value of International Mining & Milling Company has been all of the capital stock of Mount Gaines Mining Company. The principal valuable asset of value of Mount Gaines Mining Company and only important source of revenue to the estates of debtors has been a leasehold interest in the Mount Gaines Mine in Mariposa County, California. The lease contains an option in favor of the lessee to purchase an undivided  $\frac{3}{4}$  of the fee title to the property for \$50,000. The trustee has occupied and operated these mining properties throughout this proceeding.

### IV.

During these proceedings legal title to the Mount Gaines Mine has been vested in California Pacific Title and Trust Company and its successor Title Insurance and Guaranty Company as trustees for the several owners of beneficial interests therein. In 1941, through settlement of pending litigation, the trustee acquired and has continued to own one-sixth of the beneficial ownership.

### V.

At the time of the approval of a Plan of Reorganization July 29, 1948, this Court found that from November 1, 1940, to April 30, 1948, the trus-



tee had received total revenue of \$1,216,707 yielding a net profit of \$106,932 (after Chapter X expenses paid), that further net profits of \$924 and \$253.15 were realized in May and June, 1948, that as of June 15, 1948, there was on hand cash and liquid assets of \$100,509 of which \$47,420 was available for operating capital and expenses of administration after reserves against unliquidated and unpaid creditors claims, that available ore in place valued at \$22.00 per ton had a gross value of \$164,000, that debtors were solvent and that a new stock capitalization of between 1,100,000 and 1,700,000 shares of a par value of 10c each bore a reasonable relationship to the value of the assets.

## VI.

Continuous operating losses reported in August, 1948, and succeeding months reduced the cash and liquid assets immediately available for working capital and expenses of administration to \$3,843.79 as of June 1, 1949. On June 6, 1949, the trustee was given authority to terminate active mining operations immediately. The loss reported by the trustee for the fiscal year ended April 30, 1949, was \$36,705.79. Losses are attributed by the trustee to increased operating expenses, failure to recover the anticipated values from the ores mined and failure of development work to expose ore bodies of sufficient values to sustain operations. On June 6, 1949, there remained no known bodies of available ore of sufficient value to assure the successful continuation of full-scale operations.



## VII.

Prior to November, 1937, the affairs of debtor corporations had been under the domination and control of A. G. Ilseng, members of his family and other persons associated with him. Between November 1, 1937, and December 31, 1937, a group of stockholders organized as a Stockholders' Protective Committee, in collaboration with C. F. Humphrey, an attorney, ousted the Ilseng faction and assumed factual control of the debtor corporations. The legality of this action was an issue in these proceedings. In September, 1937, the books and records of debtors were seized by the United States postal authorities and in 1941 A. G. Ilseng and A. G. Ilseng, Jr., were convicted in the United States District Court for the Southern District of California of using the mails to defraud in the sale of stock of International Mining & Milling Company.

When the petitions for reorganization in this proceeding were filed twelve lawsuits were pending between the Ilseng faction and the group associated with C. F. Humphrey, involving variously charges and counter-charges of mismanagement, misapplication of funds, the diversion and failure to account for assets, the unlawful incurring of obligations and the unlawful issuance of stock. From May 18, 1938, to the institution of these proceedings the affairs and assets of the debtor corporations were in the possession and control of three trustees appointed by the Superior Court of the State of California for Mariposa County.

## VIII.

Plans of reorganization proposed by the debtors and by Chester C. Kempley in 1940 were not acted upon. The Trustee's Plan was filed July 1, 1946. Amendments and suggestions were proposed by claimants Mead and Atkinson and Kempley and by creditor Hubbard. Hearings thereon were begun in September, 1946, and continued from time to time until July 29, 1948, when an order was entered approving the trustee's Plan, as amended. This plan was accepted and was confirmed by order entered January 17, 1949, but has not been consummated.

## IX.

Claims aggregating \$203,548.95, eliminating inter-company claims and duplications, filed by 54 claimants were reduced in the amount of \$26,742.08 by settlements or rejections by the trustee without litigation and by the further sum of \$86,252.32 by court determination or approved settlements of rejected claims which were litigated, a total reduction of \$112,994.40. All allowed claims have been paid in cash in full under prior orders of this court in the total sum of \$59,279.41 to the date of these findings.

## X.

The litigation in these proceedings has been unduly protracted and has been marked by the litigious attitude of counsel, unreasonable delays and tactical maneuvering, fruitless and unnecessary con-

troversies and digressions in proceedings before the court, the stubborn adherence of parties to their positions and their disinclination to enter into settlements, and delays by the master in reporting on matters submitted to him.

The expeditious administration of the estate has been sacrificed in favor of litigation. There has been an undue amount of wasted effort and expenditure of time. These proceedings have extended over an unreasonably long period of time, increasing the costs and expenses of administration. All applicants claiming compensation for services in the Chapter X proceeding have contributed to these delaying elements.

## XI.

During these proceedings to March 31, 1949, the trustee has disbursed a total of \$144,826.70 charged to Chapter X expenses in payment of office supplies, office help, rentals, court costs and reporters, interim allowances of compensation and expenses to the trustee and counsel, postage and telephone, payroll taxes, Victory taxes, withholding taxes, other taxes, accounting and auditing fees and miscellaneous charges. The total additional amounts hereinafter allowed on account of compensation and expenses in the sum of \$32,436.00 will bring the cost of these proceedings to \$178,179.90 to and including February 28, 1949, of which \$59,147.24 represents compensation and expenses allowed to counsel. The total cost is high in relation to the value of the assets and the results accomplished.

Findings XII to XVI, on Application of  
John P. Thatcher

## XII.

Applicant requests a total allowance of \$7500 for 802 hours of service as one of counsel for the trustee from his appointment on August 29, 1939, until his withdrawal October 17, 1940. From August 29, 1939, to May of 1940, he acted as co-counsel with George A. Bartlett and from May 18, 1940, until his withdrawal he acted as co-counsel with James T. Boyd. For services during this period co-counsel George A. Bartlett was allowed and paid the sum of \$750 and James T. Boyd was allowed and paid the sum of \$1100. Applicant's services consisted of investigation into the past transactions of the debtor corporations and persons connected therewith, examination of claims and preparation of objections thereto, negotiations for the compromise of certain claims against the estate and demands in favor of the estate, the preparation of legal documents, petitions and orders, correspondence, appearances in court on administrative matters and contested claims, conferences, briefing legal questions, and advice to the Trustee.

## XIV.

During the greater portion of the period of his employment, applicant's office expenses were low and substantially all of the stenographic work was done by the secretary to the trustee who was paid by the trustee.

## XV.

The resignation of applicant was without notice during the progress of hearings and cast an additional burden of work on other counsel for the trustee, resulting in an increase in the amounts requested by them for allowances.

## XVI.

The amount requested is \$3,500 in addition to interim compensation heretofore allowed and paid the sum of \$4,250. The amount heretofore received by applicant is fair, reasonable and adequate compensation for the services rendered by him. Applicant is not entitled to any further allowance.

Findings XVII to XIX on Application of  
F. E. Braucht

## XVII.

Applicant requests allowance of \$200 as compensation for services rendered and \$10.26 reimbursement for expenses incurred as special counsel for the trustee, pursuant to an order of employment entered on the 14th day of July 1947, in appearing in the Superior Court of Mariposa County in an action there pending entitled A. N. Logie and C. F. Humphrey et al., Plaintiffs, vs. Mount Gaines Mining Company, A. G. Ilseng, et al., Defendants, No. 1646, in opposition to the granting of a motion filed therein by the defendants A. G. Ilseng and George J. Benedict for a dismissal of said action. This action was a minority stockholders' suit for the

benefit of International Mining & Milling Company to obtain an accounting from A. G. Ilseng and others as directors of said corporation and a determination of the invalidity of the issuance of 400,000 shares of Class A stock issued to the said A. G. Ilseng by International Mining & Milling Company.

### XVIII.

Applicant traveled twice from his office in Merced, California to Mariposa, California in the preparation and presentation of the matter and prepared a 5 page affidavit, together with 16 pages of exhibits, on behalf of the Trustee. As a result of the services of applicant no action was taken by the Superior Court of Mariposa County upon the motion for dismissal of said cause. Finding X does not apply to this applicant.

### XIX.

Applicant necessarily expended the reasonable sum of \$10.26 for telephone calls and typing services for which reimbursement should be allowed.

The sum of \$200 is a fair, adequate and reasonable amount to be allowed applicant for his services.

### Findings XX to XXX on Application of Charles I. Rosin

### XX.

Applicant requests compensation as attorney for certain State Court trustees in the sum of \$10,000, less \$500 previously paid, for services rendered prior



to the commencement of these proceedings in this Court and \$1,000 additional for services in these proceedings.

## XXI.

Prior to the 6th day of May 1938 and at all times thereafter there has been pending in the Superior Court of the State of California for the County of Mariposa, Action No. 1646, entitled A. N. Logie et al. vs. A. G. Ilseng, et al. On the 9th day of May 1938, pursuant to a stipulation filed in said cause, an order was entered therein appointing H. K. Trask, C. B. Buxton and U. V. Udell as trustees to hold and operate the properties and assets of Mount Gaines Mining Company and International Mining & Milling Company, the debtor corporations in these proceedings. Subsequently H. J. Trask resigned as such trustee and was replaced by A. N. Logie. These trustees continued in possession of the affairs and assets of the said corporations from appointment until the institution of these proceedings pursuant to Chapter X of the Bankruptcy Act on June 30, 1939.

## XXII.

On September 2, 1938 an order was entered in the state court proceedings authorizing the said trustees to employ applicant as their attorney therein. Applicant thereupon procured issuance of an order to show cause to restrain the directors of the debtor corporations from negotiating with the owners of the fee title to the Mount Gaines mine to terminate the then existing lease in favor of the



Mount Gaines Mining Company and to substitute therefor another lease. Thereafter in said Cause No. 1646 applicant procured a show cause order to restrain the directors of the debtor corporations from holding meetings or incurring liabilities.

### XXIII.

On October 3, 1938 an order was entered in the said cause restraining the directors from negotiating for the surrender and substitution of the existing lease, enjoining the incurring of liabilities and obligations by said directors and allowing the applicant the sum of \$300 as interim compensation for his services. A subsequent order entered in said proceeding allowed applicant the additional sum of \$200 as interim compensation for services therein. Pursuant to said orders applicant was paid and received the sum of \$500 on account of his services in said proceeding.

### XXIV.

The directors referred to in Findings XXII and XXIII were the directors referred to in Findings XLI and XLIV.

### XXV.

The court does not find that applicant was employed by the trustees prior to the second day of September 1938. The court finds that applicant rendered services described in his petition for compensation in connection with the aforesaid to show cause matters in Action 1646 between September 2,

1938 and October 3, 1938. The court does not find that any of the other services described in the applicant's petition for compensation performed prior to June 30, 1939, conferred upon the estates of the debtors in reorganization any direct, substantial and demonstrable benefit.

## XXVI.

To the extent that the foregoing services served to conserve and preserve the assets of the debtor corporations prior to the institution of the Chapter X proceeding the sum of \$500 heretofore allowed and paid to applicant in said cause is fair, adequate and reasonable compensation.

## XXVII.

Upon the institution of these proceedings in this court applicant filed herein certain answers and appearances purportedly on behalf of said State Court Trustees then in office and on various occasions appeared in this court in these proceedings purportedly on behalf of said State Court Trustees. On November 17, 1939 applicant filed in these proceedings motions for an instruction to Buxton as one of the State Court Trustees with respect to the filing by him of a closing report in the State Court cause and a request by applicant for instructions as attorney for the State Court Trustees and for authority to file his application for compensation before the State Court at Mariposa. On January 26, 1940 applicant filed in these proceedings a notice of appearance as attorney for Udell, Logie, and

Buxton as State Court Trustees. On March 26, 1942 applicant filed herein a purported report of the state court trustees Udell, Logie and Buxton, requesting this Court to consider and act upon said report.

### XXVIII.

This Court has at no time heretofore determined the authority of applicant to appear as attorney in these proceedings on behalf of the State Court Trustees. Applicant has not produced any documents or other indication of authority to act in these proceedings signed by State Court Trustees Udell and Logie. In all matters in which applicant has sought to appear before this court he has indicated authorization only by State Court Trustee Buxton. The purported report of the State Court Trustees tendered this court on May 26, 1942 was submitted only by Trustee Buxton. The court does not find that the applicant was authorized to appear or to represent the State Court Trustees in these proceedings.

### XXIX.

None of the services described in the petition of applicant for compensation asserted in connection with the Chapter X proceedings conferred any direct, substantial and demonstrable benefit upon the estates in organization or constituted any contribution toward any plan of reorganization herein.

### XXX.

Applicant is not entitled to any compensation or reimbursement for expenses in these proceedings.

Findings XXXI to XXXVII on Application of  
George Halverson

XXXI.

Applicant requests an allowance of \$2500 as compensation for services rendered and reimbursement of expenses of \$103 incurred in representing certain creditors, stockholders and others in these proceedings as follows:

A. G. Ilseng, Sr., a creditor and stock claimant.

A. G. Ilseng, Jr., a creditor and stock claimant.

Rea G. Ilseng, a creditor.

Leslie A. McKercher, a creditor.

Byron Halverson and J. J. Mueller as owners of certain undivided beneficial interests in the fee title to the property on which the Mount Gaines Mine is situated.

XXXII.

In his testimony applicant limited his claim to compensation for the services described in paragraph 5 of his application, rendered on behalf of J. J. Mueller and Byron Halverson as persons beneficially interested in the ownership of the legal title to the Mount Gaines Mine in support of the trustee in the proceeding pending before the Judge of this Court upon the order to show cause issued in the 9th day of September, 1944, upon the petition of the trustee praying for an adjudication that the lease under which Mount Gaines Mining Company occupied the Mount Gaines Mine, then constituting

the principal asset in the estates of the debtor corporations, had been extended for an additional period of 10 years from and after December 15, 1943 pursuant to an extension provision therein contained. This petition and show cause order were opposed by the trustee of the legal title to said properties and by the owners of the beneficial interests of said legal title other than J. J. Mueller, Byron Halverson and James P. Hart as trustee in these proceedings.

### XXXIII.

Applicant appeared before this Court upon the trial of said issues for 20 days in February and March 1945 and incurred an expense of \$103 in connection with his travel from his residence in Los Angeles, California to and from the place of trial in Reno, Nevada and for hotel and board.

### XXXIV.

Between March 1940 and April 29, 1949 there were pending in this court the claims of A. G. Ilseng, Sr., and A. G. Ilseng, Jr., as creditors in an aggregate amount of approximately \$38,000 for monies advanced and services rendered and the claims of A. G. Ilseng, Sr., A. G. Ilseng, Jr., and Vera Ilseng Harris for over 500,000 shares of the Class A Capital stock of International Mining & Milling Company.

Said claims were opposed by the trustee and other parties herein and cross-claims for large amounts were asserted against said claimants. Ap-

plicant represented said claimants in the prosecution of said claims against the estate.

Applicant also represented Leslie A. McKercher and Rea G. Ilseng in the prosecution of claims against these estates. His services on behalf of these claimants were wholly for the benefit of the claimants and contributed no benefit to the estates of the debtors, to the administration thereof or to the development of a plan of reorganization.

### XXXV.

Notwithstanding the position taken by applicant on behalf of Mueller and Halverson as landowners in support of the petition of the trustee for an adjudication that the lease on the mine had been extended, the court finds that the interests of owners of the land as lessors were in conflict with the interests of creditors of the estates of the debtor corporations and of the estate of Mount Gaines Mining Company as lessee and that in his simultaneous representation of creditors and of owners of the fee title to the mining property applicant represented conflicting interests which bar any claim he may have to compensation or reimbursement for expenses from the estates of the debtor corporations in these proceedings.

### XXXVI.

In his representation of the claims of A. G. Ilseng, A. G. Ilseng, Jr., and Vera Ilseng Harris, applicant failed to prosecute said claims with due diligence and dispatch and thereby contributed to



the prolongation of these proceedings and to the delay in the consideration and action upon a plan of reorganization.

### XXXVII.

Applicant is not entitled to any compensation or reimbursement for his expenses incurred in this proceeding.

Findings XXXVIII to LI on Application of  
William B. Mead and Harry H. Atkinson

### XXXVIII.

Applicants petition for the allowance of \$35,000 for compensation for services rendered and \$1,500 reimbursement for expenses incurred as counsel for the Stockholders' Protective Committee and for the debtor corporations in these proceedings. In a separate statement of Account filed June 6, 1947 by applicant Atkinson he assigns a value of \$9,545 to his services in this matter.

### XXXIX.

Throughout these proceedings Mr. Atkinson has resided in Reno, Nevada and has acted as local counsel in the matters for which compensation is sought, in association with other counsel, all of whom resided in the State of California.

### XL.

Prior to the institution of these proceedings a Stockholders' Protective Committee was formed consisting of Rene Ruch, W. Melvin Whitlock, W.



S. Robinson, Fred E. Turner, F. N. Fredericks and F. M. Buys. This committee appeared in these proceedings through C. F. Humphrey, James H. Hogin and applicants as attorneys. C. F. Humphrey was an attorney for said committee at all times from the time of its inception until the spring of 1942 and for the debtor corporations until his death in 1944. Prior to the year 1937 and thereafter until his death in 1944 C. F. Humphrey was the owner of an undivided one-third interest of the beneficial ownership of the fee title to the Mount Gaines Mine and following his death his widow Elizabeth F. Humphrey succeeded to and at all times pertinent hereto has remained the owner of this interest in said property. J. W. Humphrey is the son of C. F. Humphrey and Elizabeth Humphrey. Humphrey Estates is the personally owned holding company of the aforesaid Humphrey family.

## XLI.

In the months of November and December, 1937 C. F. Humphrey and J. W. Humphrey, the Stockholders' Protective Committee and others ousted the Ilseng management and directors and substituted as directors J. W. Humphrey, W. S. Robinson, A. N. Logie, A. E. Logie and Rene Ruch in the case of Mount Gaines Mining Company and J. W. Humphrey, A. N. Logie, W. S. Robinson and Rene Ruch in the case of International Mining & Milling Company. These directors employed C. F. Humphrey, James H. Hogin and applicants as counsel for the

debtor corporations and authorized the filing of the petitions in these proceedings.

## XLII.

Claims were filed in these proceedings by C. F. Humphrey, William P. Hubbard, James H. Hogin, J. W. Humphrey, Humphrey Estates, William B. Mead, Luther Elkins, Arthur J. Edwards, A. N. Logie, A. E. Logie, Gertrude Purcell, Sloan & Steiner, James H. Hogin, Redwine & Redwine, Agnes Boyd, Rose Fanucchi and John L. Riemer and others in an aggregate amount in excess of \$35,460.87 for services rendered and monies advanced at the instance and request of these directors. Objections were filed to these claims by the trustees and others. The claims were referred to Arthur F. Lasher as special master for hearing. Among the defenses raised by the trustee against these claims was the contention that the directors named in Finding XLI has never been lawfully elected to office and that the obligations incurred by them were illegal and void. The successful defense against these claims would have augmented the available assets and enhanced any equity of the stockholders in debtor corporations.

## XLIII.

William B. Mead asserted his personal claim and appeared as counsel on behalf of the claimants C. F. Humphrey, Humphrey Estates, Gertrude Purcell and J. W. Humphrey and at all times represented the said claimants until the final disposition of their

claims in this proceeding. In the appeal taken to the Circuit Court of Appeals for the Ninth Circuit from the order of the District Judge rejecting the claim of C. F. Humphrey, William B. Mead requested and received permission from H. H. Atkinson to name the said Atkinson as associated with him in the notice of appeal and on the briefs filed on behalf of appellant in the Circuit Court of Appeals. H. H. Atkinson did not do any actual work in connection with this appeal. H. H. Atkinson joined with William B. Mead as attorneys for claimants in signing a stipulation for the settlement of the claims of C. F. Humphrey, Humphrey Estates and J. W. Humphrey filed April 22, 1947. H. H. Atkinson appeared with William B. Mead on behalf of claims in objections filed December 4, 1945 to the Special Master's Report on the claim of J. W. Humphrey and in the brief in support thereof filed April 24, 1946; in objections filed November 13, 1945 to the Special Master's Report on the claim of Humphrey Estates, Inc. and in the memorandum in support thereof filed on or about June 2, 1946.

#### XLIV.

In connection with the opposition by the Trustee to the aforesaid claims the Trustee procured the issuance of a show cause order on the 23rd day of November, 1942 directing Rene Ruch, J. W. Humphrey, John L. Reimer, W. Melvin Whitlock, Charles Nessler, A. N. Logie, H. K. Trask, W. S. Robinson, A. E. Logie and Arthur J. Edwards to

show cause why their election to the offices of directors of the debtor corporations should not be declared to have been illegal and void and why all of the acts, contracts and obligations performed or incurred by them as such directors should not be set aside as void. These issues were pending before this Court for determination in connection with all of the aforesaid claims until their final disposition in this proceeding.

#### XLV.

In the response to this order H. H. Atkinson, under instruction by said directors, appeared for all of the respondent directors and the debtor corporations and defended the validity of said elections and the validity of the acts of said directors.

#### XLVI.

During the month of May 1942 Mr. Mead withdrew as counsel for the committee and for the debtor corporations. He resumed these employments in May of 1944. During his absence, Mr. Luther Elkins of San Francisco, an applicant herein, was employed by the Stockholders' Protective Committee. Mr. Elkins prepared the pleadings and briefs which were signed and filed by Mr. Atkinson on behalf of the respondent directors in opposition to the order to show cause why their election should not be declared invalid.

## XLVII.

In the show cause proceeding initiated by the trustee September 9, 1944 to obtain an adjudication that the lease on the Mount Gaines Mining Company had been extended for an additional period of 10 years following its expiration date on December 15, 1943, Elizabeth F. Humphrey as successor to the interests of C. F. Humphrey in the beneficial ownership in the legal title to the Mount Gaines Mine appeared through Arthur J. Edwards as counsel in opposition to the trustee and J. W. Humphrey actively assisted in the defense against the petition of the trustee. During the 3 weeks of hearings on this matter before the Judge of this Court there was pending and continued from day to day a motion filed by applicants Mead and Atkinson purportedly representing Mount Gaines Mining Company and Louis T. Milburn, a creditor, to dismiss the reorganization proceedings as to the Mount Gaines Mining Company, and to discharge the trustee. These applicants appeared daily to urge consideration of this motion which was heard and denied on the day following the conclusion of the lease extension matter. Applicants at no time supported this proceeding by the trustee.

## XLVIII.

The members of the Stockholders' Protective Committee and the directors named in Finding XLIV concurred with C. F. Humphrey in a plan to cancel the original lease between the landowners

and the Mount Gaines Mining Company and to execute a new lease in favor of "bona fide" stockholders of International Mining & Milling Company, without a purchase option.

#### XLIX.

Findings LXXIX to LXXXIX on the application of Luther Elkins, LIII to LXI on the application of Arthur J. Edwards and LXII to LXVIII on the application of John L. Riemer expressly are referred to and incorporated as applying to this application.

#### L.

The court is unable to find that the representations of the Stockholders Protective Committee, of the debtor corporations, of the individuals J. W. Humphrey, C. F. Humphrey and his assignee Elizabeth F. Humphrey, Humphrey Estates as creditors in his proceeding and of the individual directors named in Finding XLI, by applicants, either separately or collectively, or in association with Luther Elkins, C. F. Humphrey or James H. Hogin, were separate and distinct representations. The Court is unable to find any true separation between the representation of the interest of C. F. Humphrey, and his successor Elizabeth Humphrey, as a landowner and as a creditor in those proceedings.

#### LI.

Applicants have represented conflicting interests in these proceedings barring an allowance to either



of them of compensation or reimbursements for expenses incurred in these proceedings.

Finding LII on the application of  
A. G. Ilseng

On the 29th day of May, 1949 this court entered its order approving a compromise of the claims of A. G. Ilseng, Sr., et al. which included the release and satisfaction by A. G. Ilseng of any and all claims and demands of the said A. G. Ilseng for compensation for services or reimbursement for expenses incurred in this proceeding. This agreement of compromise has been performed and consummated and the claim of A. G. Ilseng for compensation and expenses in this proceeding has been satisfied and discharged.

Findings LIII to LXI on the Application of  
Arthur J. Edwards

LIII.

Applicant petitions for \$2440 as compensation for services rendered and \$620 reimbursement of costs and expenses incurred in these proceedings as attorney for the Creditors' Protective Committee and for the creditors represented by this committee.

LIV.

Findings LXII to LXVIII the Application of John L. Riemer, and Findings XXXVIII to LI on the Application of Messrs. Mead and Atkinson are expressly included and referred to in connection with this application.



## LV.

Prior to and during this proceeding Arthur J. Edwards has represented substantially all of a one-third interest in the beneficial ownership of the Mount Gaines Mine. During this period a portion of this one-third interest has been owned by Julian M. Edwards and Marjorie B. Edwards, son and daughter-in-law of Arthur J. Edwards and other portions thereof have been owned by James S. Hazen and Persis E. Hazen, D. R. Gustaveson, Melissa Gustaveson and Harry Lee Jones.

## LVI.

On March 2, 1942 the Trustee procured the issuance of an order to show cause directed to the owners of the legal title and beneficial interests in the Mount Gaines Mine to obtain a determination that the option contained in the lease on the Mount Gaines Mining property providing for the purchase by the lessee of an undivided three-fourths interest in the property for the sum of \$50,000 has been exercised. Arthur J. Edwards personally was a respondent in this show cause proceeding and appeared therein for himself and on behalf of James S. Hazen and Persis E. Hazen and opposed this proceeding in the District Court. Had this litigation been successful, the cash in the estate would have been augmented by the refund to the estate of overpaid royalties from the landowners and the estates would have further benefitted by relief from paying 10% of the gross returns from the mine to the landowners as royalties which would have

further increased cash available for the payment of the claims of creditors.

#### LVII.

In the proceeding initiated on behalf of the trustee by petition and order to show cause on September 9, 1944 for a determination that said lease had been extended according to its terms for an additional period of 10 years from December 15, 1943 Arthur J. Edwards filed an answer and appeared on behalf of respondent owners of beneficial interests Harry Lee Jones, Julian M. Edwards and Marjorie B. Edwards. He actively participated before the District Judge in the trial of this controversy and appeared as counsel on the brief filed in the Circuit Court of Appeals in the appeal taken by the respondent landowners from the findings and judgment in favor of the trustee in the District Court. Had the landowners been successful in terminating this lease December 15, 1943 the estates would have been deprived of their principal asset other than cash and only substantial source of revenue.

#### LVIII.

At all times during the proceedings on both of said orders to show cause the amount of the claims filed in the proceedings both liquidated and not liquidated as to the amounts exceeded the amount of cash and liquid assets available for the payment of such claims and costs and expenses of administration.

## LIX.

On or about July 20, 1940 Arthur J. Edwards appeared in these proceedings as attorney for individual creditors A. N. Logie, A. E. Logie, Louis T. Milburn, Gertrude Purcell, W. S. Robinson, Agnes L. Boyd, John L. Riemer, J. S. Smith, Arthur J. Edwards, F. M. Donovan, Mayowen E. Peel, Standard Wholesale Electric Company and the Creditors Protective Committee. On July 29, 1942 he appeared in proceedings on behalf of claimant Rene Ruch and at all times in these proceedings he had represented the claim of Whitlock as a creditor.

## LX.

The interests of the landowners represented by Arthur J. Edwards in this proceeding were adverse to the trustee, the estates and the interests of creditors and conflicted with the interests of creditors and of the Creditors Protective Committee.

## LXI.

Applicant is not entitled to the allowance of any compensation or reimbursement for expenses incurred.

Findings LXII to LXVIII on the Application of  
John L. Riemer

## LXII.

John L. Riemer requests an allowance of \$1000 as compensation for services rendered and reimbursement of \$100 for expenses incurred before and

during the Chapter X proceeding as Chairman of the Creditors Protective Committee.

### LXIII.

Findings XXXVIII to LI on the Application of Mead and Atkinson and Findings LIII to LXI on the Application of Arthur J. Edwards are expressly referred to and incorporated on this Application.

### LXIV.

The Creditors Protective Committee was the outgrowth of committees selected at meetings called by J. W. Humphrey October 18, 1937, of creditors of both companies. Prior to the commencement of the Chapter X proceeding these committees had been combined and all of the personnel had become inactive except Riemer who selected Mayowen E. Peel and one Dickason to serve with him as a committee. Mayowen E. Peel is the daughter of Arthur J. Edwards and was a creditor by virtue of a judgment obtained in her name upon an assigned claim of Arthur J. Edwards for legal services. Dickason was a representative of Standard Wholesale Electric Company, a creditor whose claim for \$508.96 was rejected by the trustee in 1940 and was not prosecuted further.

### LXV.

Arthur J. Edwards and John L. Riemer first became associated through their mutual employment by C. F. and J. W. Humphrey in connection with the disputed elections in November and December 1937.

## LXVI.

The committee held authorization from 33 creditors whose claims totalled \$38,159.72. Of these, eleven never filed claims on their aggregate demands of \$1600. Of the remaining authorizations, three are accounted for by the claims of J. W. Humphrey, C. F. Humphrey and Humphrey Estates, and nine others who served as directors or attorneys employed by the directors who took office by virtue of the disputed elections in November and December 1937. Of the remaining 10 authorizations, five were received from persons asserting claims arising from employment by said directors. During this proceeding there has been close association and common interest between said directors, the Creditors Committee, the Stockholders Protective Committee, the landowner interests of the Humphrey family, the landowner interests represented by Arthur J. Edwards, in defending the validity of the acts of said directors.

## LXVII.

Applicant attended the initial hearing in this proceeding on August 7-8, 1939, sent out communications requesting authorizations from creditors, carried on correspondence with various individual creditors. There is no evidence showing any contribution by claimant to the administration of the estates of the debtors or to the development of any plan of reorganization.

## LXVIII.

Applicant is not entitled to any compensation for services or reimbursement for expenses.

Findings LX to LXV on Application of  
Chester C. Kempley

## LXX.

Applicant requests compensation in the sum of \$23,499 for services rendered under orders of employment as special counsel for the trustees and as counsel under authorizations from a number of stockholders, less a credit of \$3889 for sums heretofore allowed and paid as interim compensation leaving a balance requested of \$19,610.

## LXXI.

Applicant appeared in these proceedings on behalf of his law firm, Holcomb, Holcomb & Kempley, as a creditor, asserting a claim for attorneys fees for services to the debtors in the sum of \$7,323.18 which was allowed in the sum of \$4150 prior to May 17, 1941. He also appeared on behalf of the holders of more than 267,110 shares of Class A stock of International Mining & Milling Company under written authorizations. He also purported to appear on behalf of the debtor corporations, asserting employment by the Ilseng management group as directors.

## LXXII.

Applicant was specially employed by the trustee under eight orders of employment based on peti-



tions filed by the trustee in compliance with Sections 157-158 of Chapter X of the Bankruptcy Act and General Order in Bankruptcy No. 44. Services under these orders related to the following matters arising in the course of this proceeding:

(a) Enforcement and collection of a promissory note held by the Trustee as an asset of the estates against Ballarat Mining Company, a corporation in bankruptcy reorganization proceedings pending in the United States District Court at Los Angeles, California, in the sum of \$5000, on which applicant was successful in obtaining \$2,700 in favor of the estate.

(b) Preparation for the trial of the case of McKelvey vs. International Mining & Milling Company, C. F. Humphrey, J. W. Humphrey, et al., a minority stockholders' suit against the directors and officers who took possession and control of the affairs of the debtor corporations as a result of the disputed elections in November and December 1937 for an accounting and restitution of misapplied funds of the estates. This case was dismissed as part consideration for the settlement of the claims of C. F. Humphrey, J. W. Humphrey and Humphrey Estates.

(c) Assisting counsel for the Trustee in opposing the appeal on the claim of C. F. Humphrey to the Circuit Court of Appeals from the judgment of the District Court denying said claim.



(d) Representing the Trustee and assisting counsel for the Trustee in the prosecution of the proceedings before the District Court in the show cause order issued in September 1944 for a determination that the lease had been extended for an additional period of 10 years.

(e) Representing the Trustee and assisting counsel for the Trustee in the appeal by the respondents in said matter to the United States Circuit Court of Appeals from the judgment of the District Court in favor of the Trustee.

(f) Preparing the response to the petition for writ of certiorari to the Supreme Court of the United States by said respondents following the affirmance by the Circuit Court of Appeals of the judgment of the District Court in said matter.

(g) Prosecuting and collecting the claim of the Trustee against a former superintendent of the mine for the restitution of money and property.

(h) Representing the trustee in the Superior Court of Mariposa County, California in Action No. 1474. therein in proceedings for the settlement of the report of Title Insurance and Guaranty Company as trustee to the legal title of the Mount Gaines Mine and the distribution and allocation among the owners of the beneficial interest therein of certain undistributed royalties.

## LXXIII.

In addition to the foregoing services performed under special orders of employment, applicant co-operated with and assisted counsel for the trustee in other services as follows, all of which were rendered subsequent to the adjudication and liquidation of applicant's personal claim and were beneficial in the administration of the estate:

(a) Prosecution of the petition and order to show cause why the election of the so-called Humphrey board of directors should not be declared invalid and illegal.

(b) Review before the District Judge of the Master's rulings on a number of claims and opposing the motion of Mount Gaines Mining Company and Lewis T. Milburn, creditor, to dismiss the proceeding and discharge the trustee heard and determined March 14, 1945.

(c) Resisting certain motions presented by Messrs. Mead and Atkinson on March 16, 1946 to declare null and void certain prior orders awarding interim compensation to the trustee and his counsel, to declare the office of trustee of International Mining & Milling Company vacant.

(d) Effecting compromises of the claims of C. F. Humphrey, Humphrey Estates, J. W. Humphrey, William B. Mead, W. Melvin Whitlock, and the claim of Charles I. Rosin for personal injuries.

(e) Opposing an application by attorneys Mead

and Hubbard in Action 1646, Mariposa County, California for a nunc pro tunc order substituting them as attorneys for the debtor corporations.

(f) Appearing before the Board of Supervisors of Mariposa in July, 1944 in opposition to a resolution of intention to increase the assessed valuation of the Mount Gaines Mine.

(g) Preparation of amended objections to claims of certain creditors.

#### LXXIV.

In the performance of the foregoing services there was some duplication of effort between applicant and counsel for the trustee. Until its liquidation in 1941 applicant's personal claim conflicted with the interest of stockholders barring allowance of compensation for services rendered during that period.

#### LXXV.

For the services rendered under special orders of employment the sum of \$6200 is fair, adequate and reasonable compensation. For the other services described the sum of \$5800 is fair, adequate and reasonable compensation. Applicant is entitled to total compensation in the sum of \$12,000 and has received on account of services rendered under special orders of employment interim compensation in the total sum of \$3889. Applicant is entitled to be paid an additional sum of \$8111 as the unpaid balance. All expenses incurred by applicant have

been reimbursed pursuant to prior orders of this court.

Findings LXXVI to LXXVIII on Application of  
James T. Boyd

LXXVI.

James T. Boyd requests an allowance of compensation of \$43,122 as attorney for the Trustee less credit for payments heretofore allowed and received in the sum of \$16,875 under orders of this court awarding interim compensation, leaving a requested balance of \$26,274.00.

LXXVII.

Applicant was appointed May 18, 1940, by order of this court to replace George H. Bartlett, who resigned as co-counsel for the Trustee, with John Thatcher, with whom he served until the latter withdrew on October 17, 1940. Since the last date applicant has been the sole counsel for the trustee in general employment except for a period of approximately 18 months subsequent to the 19th day of July, 1946, when applicant was assisted by George A. Green appointed as associate counsel under order entered that date. Mr. Green has filed no application for his services in this proceeding.

LXXVIII.

Applicant's principal services related to:

(a) Litigation of claims arising out of obligations incurred by the Humphrey board of directors

before the special master in Reno, San Francisco and Los Angeles in 1940 and 1941 and services in connection with settlement of certain other claims at Los Angeles during that period.

(b) Closing the settlement of a controversy and litigation involving a claim by the trustee against A. G. Ilseng and others to a one-third interest in the fee title to the Mount Gaines Mine, as a result of which the trustee obtained clear title to a one-sixth interest in the Mount Gaines Mine and one-half of approximately \$12,000 in royalty payments impounded and accumulated to the date of the settlement.

(c) Unsuccessful prosecution before the District Court and Circuit Court of Appeals of the proceeding initiated by show cause order March 2, 1942, to declare the option for the purchase of an undivided three-fourths interest to the fee title of the Mount Gaines mine, contained in the lease held by Mount Gaines Mining Company, to have been exercised.

#### LXXIX.

(d) Prosecution before the special master of the proceeding initiated by show cause order issued November 25, 1942, to determine the validity of the election of the Humphrey directors.

(e) Litigation before the District Judge and in the Circuit Court of Appeals on the review of the master's ruling rejecting the claim of C. F. Humphrey in the sum of \$10,000.

(f) Preparation of petition, initiation and prosecution of the proceeding under the show cause order issued September 9, 1944, for a determination that the lease on the Mount Gaines Mining Company had been extended, before the Judge of the District Court and in the Circuit Court of Appeals.

(g) Review of the master's recommendations on the claims of creditors before the Judge of the District Court.

(h) Preparation for the trial of the case of McKelvey vs. International Mining & Milling Company, C. F. Humphrey, et al., in the Superior Court of California for San Diego County.

(i) Consulting and advising with the trustee from time to time in connection with administrative and business problems; preparation of necessary petitions, applications, exhibits, briefs and other documents for use before the court in connection with the litigation and administrative and business affairs of the estates; appearances before the District Judge, Referee and Special Master in connection with administrative and business affairs of the estates; appearances in the Circuit Court of Appeals.

### LXXX.

Applicant prepared and filed before the District Court and the Special Master and in the Circuit Court of Appeals not less than fifteen (15) briefs on legal issues ranging in length from four to 220 pages. Applicant devoted the greater portion of



his time to the affairs of debtor's estates from the time of his employment until the latter part of the year 1946 to these services. Applicant's health failed in the latter part of the year 1946, seriously limiting the amount of time that he was able to devote to business affairs thereafter. Applicant has rendered only nominal service since December 31, 1946, and requests no compensation for services rendered after the year 1947.

#### LXXXI.

Practically all of the services above described related to litigation in opposition to the owners of the majority of the fractional interest in the Mount Gaines Mine, that is to say the interest owned by C. F. Humphrey and his family and the interest represented by Arthur J. Edwards and in opposition to the board of directors which assumed control at the disputed elections in November and December, 1937, and in opposition to persons asserting claims by virtue of acts, contracts or employment by said board of directors.

#### LXXXII.

Following submission in 1941 to the special master of the contested claims asserted by persons claiming through the board of directors which assumed control following the disputed elections in November and December, 1947, applicant counselled the trustee against negotiations for the settlement of any of these claims and, until applicant ceased to be active



in the affairs of debtors following the year 1946, in deference to this advice no overtures for settlement of any of these claims except the claim of Whitlock were considered or acted upon by the trustee.

### LXXXIII.

Finding XXXIV on the Application of George Halverson hereby is referred to and incorporated on this Application.

### LXXXIV.

Having counselled the settlement of the money claims of A. G. Ilseng and A. G. Ilseng, Jr., which settlement was rejected by the referee in bankruptcy in 1941, applicant made no effort for a period of five years to cause the petition for review filed by the applicant to be heard or determined before the Judge of the District Court. During the interval additional facts bearing adversely on the merits of these claims were brought to the attention of applicant who took no action to bring these facts to the attention of the Court.

### LXXXV.

Claims of A. G. Ilseng, A. G. Ilseng, Jr., and Vera Ilseng Harris for more than 500,000 shares of the Class A stock of International Mining & Milling Company, representing in excess of 25% of the issued and outstanding stock of said company, if said claims were valid, were filed prior to March 1, 1940. Applicant at no time made or advised any

opposition by the trustee to said claims although the validity of the claim of A. G. Ilseng was in issue in litigation pending at the time the reorganization proceeding was instituted and further facts and matters bearing on the invalidity of such claims were brought to his attention during this proceeding.

#### LXXXVI.

The Trustee finally was compelled to employ the services of special counsel to investigate, advise and act in the matters referred to in Findings LXIII to LXV, inclusive.

#### LXXXVII.

The matters referred to in Findings LXXXII to LXXXVI, inclusive, substantially delayed the conclusion of these proceedings, prolonged the administration of the estates, materially increased the cost thereof and detracted from the value of his other services.

#### LXXXVIII.

The sum of \$24,375 is fair, adequate and reasonable compensation to be allowed to applicant for his services rendered herein. He has been allowed heretofore and paid the sum of \$16,875 as interim compensation under prior orders of this court, leaving a balance of \$7,500 as additional compensation to be allowed and paid to him.

Findings LXXXIX to XCIX on Application of  
Luther Elkins

## LXXXIX.

Luther Elkins requests an allowance of \$3500 as compensation for services rendered as counsel for the Stockholders' Protective Committee from April 11, 1942, to May 11, 1944.

## XC.

In consideration of legal services rendered and to be rendered to C. F. Humphrey to protect the interests of C. F. Humphrey and Humphrey estates in the ownership of the Mount Gaines Mine, applicant acquired on the 18th day of April from C. F. Humphrey and at all times subsequent thereto has retained a five per cent interest in all sums received by C. F. Humphrey and Humphrey Estates, Inc., whether as income or as proceeds from sale, disposition or division of the Mount Gaines mining property. In further consideration of additional services performed and to be performed under this agreement, applicant acquired on March 19, 1945, and at all times thereafter has retained an additional five per cent interest in such income or proceeds.

## XCI.

On May 12, 1942, applicant was employed on behalf of the Stockholders' Protective Committee by written letter of authority from the secretary of the Committee providing "You are authorized to proceed with such legal work as may be necessary

in bringing to a conclusion the proceedings now in the hands of the Federal Court . . . in association with Mr. H. H. Atkinson of Reno, Nevada. I am this date asking Mr. C. F. Humphrey to obtain the files of our former attorney, Wm. B. Mead, in order that you may be advised fully . . .”

### XCII.

At the time that he accepted this employment applicant knew that there was pending before the District Court the show cause proceeding described in Finding LVI.

### XCIII.

On January 10, 1942, prior to the undertaking of this employment, applicant was employed to and did render a formal legal opinion to C. F. Humphrey to the effect that the purchase option referred to in Finding LVI had never been exercised in fact and that the purported exercise of the option on which the trustee relied had in effect permanently destroyed the enforceability of the option. The first of these questions was an issue before the District Court and Circuit Court of Appeals in the proceedings on said show cause order at all times between March 2, 1942, and July 24, 1943; the second was an issue before the District Court and the Circuit Court of Appeals in the proceedings initiated by the petition and order to show cause described in Finding XXXII. The option to purchase has at all times been a valuable asset of the estates of debtors.

XCIV.

During his employment by the Committee applicant rendered services on behalf of the Committee in opposing the show cause order issued March 2, 1942.

XCV.

Findings XXXIX to LI are referred to and incorporated as applying to this application.

XCVI.

Following termination of his employment by the Committee applicant was engaged with other counsel in prosecuting the appeal to the Circuit Court of Appeals in the lease extension controversy described in Findings XXXII, XLVII and LXXXIII.

XCVII.

Applicant performed the services described in his petition, as amended at the hearing thereon. None of the services described in applicant's petition conferred any benefit on the estates of debtors, aided in the administration thereof, or contributed to the development of any plan of reorganization.

XCVIII.

Applicant's personal interests and his commitments as counsel for C. F. Humphrey were in conflict with the interests of stockholders and adverse to the estates in reorganization.

XCIX.

Applicant is not entitled to compensation or reimbursement for expenses.

Findings C to CIV on Application of  
James P. Hart

James P. Hart requests an allowance of \$57,250 as compensation for services rendered as trustee from August 11, 1939, to January 21, 1949, less \$41,562.50 previously paid as interim allowances leaving a balance of \$15,687.50, and approval of expenses incurred in the sum of \$4,564.90 for which he has heretofore been reimbursed in the sum of \$4,497.05, leaving a balance of \$67.85.

CI.

Applicant, a mining engineer, was appointed as trustee of the estates of both debtors by orders August 11, 1939, and forthwith qualified and thereafter at all times since has served in this capacity. During the period covered by his application he has had no other employment except a few jobs as consulting engineer in 1948-1949. He has had no compensation since December 18, 1947, when an order was entered granting interim compensation for a period ending June 31, 1947. Interim compensation heretofore granted has been at the rate of \$450 per month except for one short period at a rate of \$330 per month.

CII.

Applicant rendered the services described in his petition. Much of the work done was of a clerical nature.



## CIII.

Applicant failed to obtain prompt and adequate legal advice and action in the matters referred to in Findings LXXIV, LXXV and LXXVI for unduly long periods of time, contributing materially to the delay in the progress of the proceedings.

## CIV.

The sum of \$51,562 is fair, adequate and reasonable compensation for the services performed by applicant. \$500 has been allowed on account of this application by order entered May 21, 1949, leaving an additional sum of \$9,500 to be allowed in addition to all sums heretofore allowed. The expenses incurred by applicant have been reasonable and necessary and should be approved in the total sum of \$4,483.65 leaving a balance of \$67.85 to be paid in excess of amounts heretofore reimbursed.

Findings CV and CVI on the Application of  
J. W. Warford

## CV.

Applicant filed a claim in the sum of \$1,001.67 based on an order allowing that amount, as compensation for applicant's services as Referee, entered in Action 1646, Mariposa County, California, prior to the institution of these proceedings.

## CVI.

Applicant produced no evidence as to the character, nature or extent of the services rendered or to

establish any direct substantial and demonstrable benefit to the estates of debtors in reorganization.

Findings CVII on the Application  
of Hazel Hubbard

CVII.

Applicant, as surviving spouse of William P. Hubbard, deceased, a creditor, requests an allowance of \$800 for services rendered and \$150 for reimbursement for expenses incurred by William P. Hubbard, during his lifetime in this proceeding. The application was filed April 18, 1949, two days in advance of the time set for hearing on applications for allowances and subsequent to the giving of general notice to all creditors and stockholders by the trustee of this hearing. No notice of a hearing on this application was given.

Findings CVIII to CXI on Application of  
Arthur F. Lasher

CVIII.

Applicant requests \$3,250 as compensation for services rendered and \$550 for expenses incurred as Referee and Special Master, less \$625 heretofore allowed and paid on account of compensation, leaving a total balance of \$3175.

CIX.

Applicant spent 92 days in the actual conduct of hearings on matters referred to him in this proceeding and prepared 19 reports totaling 571 pages.

## CX.

Applicant's delay in reporting on a number of claims and in preparing his certificate on review from his order rejecting the first compromise of the monetary claims of A. G. Ilseng and A. G. Ilseng, Jr., contributed materially to the prolongation of these proceedings.

## CXI.

The sum of \$3250, less the sum of \$625 previously allowed and paid, leaving a balance of \$2625, is fair, reasonable and adequate compensation for applicant's services. The sum of \$550 is a reasonable charge for expenses necessarily incurred. These sums should be allowed to applicant.

Findings CXII to CXVI on Application of Griswold & Vargas and Royal A. Stewart

## CXII.

Applicants request \$4000 as compensation for services rendered and \$289.09 as reimbursement for expenses incurred as special counsel for the trustee under an order of appointment entered November 14, 1947, for purposes described in said order.

## CXIII.

All of the services covered by the application were rendered by Royal A. Stewart, associated in this employment with applicants Griswold & Vargas.

## CXIV.

Applicants devoted 525.10 hours to February 3,

1949, to investigation, study, research, advice to the trustee, preparation of petitions, pleadings, orders, depositions, in the matter of the monetary and stock claims of the members of the Ilseng family described in Findings XXXIV, LXXV. Issue was joined on all of the claims, cross-claims for large amounts were interposed and trial was begun before the Referee. During an adjournment the claims were compromised and the compromise was approved by order April 29, 1949. Services in connection with the compromise were rendered after the period covered by the application.

#### CXV.

These applicants took no part in the general progress of the reorganization proceedings. Finding X does not apply to them.

#### CXVI.

\$4000 is a fair, reasonable and adequate sum to be allowed to applicants as compensation for their services and the sum of \$289.09 for the expenses necessarily incurred is reasonable. These amounts should be allowed to applicants.

Dated this 28th day of June, 1949.

/s/ ROGER T. FOLEY,  
Judge.

From the foregoing Findings of Fact the Court makes the following

## CONCLUSIONS OF LAW

### I.

The petition of John C. Thatcher should be denied.

### II.

Applicant F. E. Brancht should be allowed the sums of \$200.00 as compensation for services and \$10.26 as reimbursement for expenses.

### III.

The petition of Charles I. Rosin should be denied.

### IV.

The petition of applicant George Halverson should be denied.

### V.

The petition of applicants William B. Mead and Harry H. Atkinson should be denied.

### VI.

The petition of A. G. Ilseng should be denied.

### VII.

The petition of Arthur J. Edwards should be denied.

### VIII.

The petition of John L. Riemer should be denied.

## IX.

Applicant Chester C. Kempley should be allowed the sum of \$8,111.00, in addition to amounts heretofore allowed, as compensation for services.

## X.

Applicant James T. Boyd should be allowed the sum of \$7,500.00, in addition to amounts previously allowed, as compensation for services.

## XI.

The petition of Luther Elkins should be denied.

## XII.

Applicant James P. Hart should be allowed compensation in the sum of \$10,000.00, in addition to amounts previously allowed, his expenses in the sum of \$4,564.90 and prior reimbursement of \$4,497.05 should be approved and reimbursement of the unpaid balance of \$67.85 should be allowed.

## XIII.

The petition of Hazel B. Hubbard should be denied.

## XIV.

The Petition or claim of J. W. Warford should be denied.

## XV.

Applicants Griswold & Vargas and Royal A. Stewart should be allowed compensation in the sum of \$4,000.00 and reimbursement for expenses in the sum of \$289.09.

## XVI.

Applicant Arthur F. Lasher should be allowed compensation in the sum of \$2,625.00, in addition



to amounts previously allowed, and reimbursement for expenses in the further sum of \$550.00.

Dated this 28th day of June, 1949.

/s/ ROGER T. FOLEY,  
Judge.

### ORDER

Upon the foregoing Findings of Fact and Conclusions of Law it is Ordered that:

1. The petitions of John P. Thatcher, Charles I. Rosin, George Halverson, William B. Mead and Harry H. Atkinson, A. G. Ilsing, Arthur J. Edwards, John L. Riemer, Luther Elkins, Hazel B. Hubbard and J. W. Warford are denied.

2. The applicants named below are allowed the amounts set forth, in addition to amounts previously allowed or reimbursed, as compensation and reimbursement in full for all services rendered and expenses incurred through the 28th day of February, 1949:

| Name                         | Compensation | Reimbursement |
|------------------------------|--------------|---------------|
| F. E. Braucht . . . . .      | \$ 200.00    | \$ 10.26      |
| Chester C. Kempley . . . . . | 8,111.00     | none          |
| James T. Boyd . . . . .      | 7,500.00     | none          |
| James P. Hart . . . . .      | 10,000.00    | 67.85         |
| Griswold & Vargas and        |              |               |
| Royal A. Stewart . . . . .   | 4,000.00     | 289.09        |
| Arthur F. Lasher . . . . .   | 2,625.00     | 550.00        |

3. Expenses of James P. Hart in the sum of \$4,564.90 and prior reimbursement thereof of \$4,497.05 are approved.

4. Jurisdiction is retained to direct the time and manner of payment of the foregoing allowances which remain subject to the further order of the Court.

Dated this 28th day of June, 1949.

/s/ ROGER T. FOLEY,  
Judge.

[Endorsed]: Filed July 1, 1949.

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[Title of District Court and Causes.]

CERTIFICATE OF CLERK,  
U. S. DISTRICT COURT

I, Amos P. Dickey, Clerk of the United States District Court for the District of Nevada, do hereby certify that the foregoing and accompanying documents and exhibits listed below, are the originals filed in the above-entitled matters, and that the copies of letters, court minutes, and docket entries are true and correct copies, and that they constitute the papers and records in connection with the Petition of Chas. I. Rosin for allowance of appeal filed in the U. S. Court of Appeals for the Ninth Circuit, with the exception of the Reporter's Transcript of Testimony, which will follow as soon as completed, viz:

Copy of letter of Chas. I. Rosin, dated July 21, 1949, to Amos P. Dickey, Clerk.

Original Debtor's Petition for Relief Under Chapter 10 of the Bankruptcy Act, case No. A-34-A;

Original Order Continuing Debtor Temporarily in Possession and Operation of its Business, etc., Case No. A-34-A;

Original Answer of Trustees Acting under the jurisdiction of the Superior Court of California, Case No. A-34-A;

Original Debtor's Petition for Relief under Chapter 10 of the Bankruptcy Act, case No. A-35-A;

Original Order Approving Filing of the Petition of Subsidiary Corporation, etc., case No. A-35-A;

Original Answer of Trustees Acting Under Jurisdiction of the Superior Court of California, case No. A-35-A;

Original Petition of Chas. I. Rosin for allowance of fees to attorney for State Trustees;

Original Supplement to Petition of Chas. I. Rosin for Allowance of Fees to Attorney for State Trustees;

Original Memo of Proposed Stipulation on Reception of Evidence;

Copy of Minutes of Court of June 13, 1949;

Copy of Docket Entries of June 13, 1949 and July 1, 1949;

Copy of Clerk's letter to counsel of June 13, 1949;

Original Findings of Fact, Conclusions of Law and Order on Application for Compensation;

Original Notice of Entry of Findings of Fact, Conclusions of Law and Order on Applications for Compensation; with Affidavit of Olive M. Cohn attached;

Rosin Exhibits Nos. 1 to 15, inc. (originals);

S. E. C. Exhibits Nos. A and B (originals).

In Witness Whereof, I have hereunto set my hand and affixed the seal of said United States District Court this 26th day of July, A.D. 1949.

[Seal]      /s/ AMOS P. DICKEY,  
Clerk, U. S. District Court.

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[Endorsed]: No. 12331. United States Court of Appeals for the Ninth Circuit. Charles I. Rosin, Appellant, vs. J. P. Hart, Trustee in Bankruptcy of the Estates of International Mining & Milling Co., debtor and Mount Gaines Mining Company, debtor, and Securities and Exchange Commission, Appellees. Appeal from the United States District Court for the District of Nevada.

Filed August 15, 1949.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

At a Stated Term, to wit: The October Term 1949, of the United States Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the fifteenth day of August in the year of our Lord one thousand nine hundred and forty-nine.

No. 12331

Present: Honorable William Healy, Circuit Judge,  
Presiding.

Honorable Homer T. Bone, Circuit Judge.

Honorable William E. Orr, Circuit Judge.

CHARLES I. ROSIN,

Appellant,

vs.

J. P. HART, Reorganization Trustee of International Mining and Milling Company, a Corporation, and of Mt. Gaines Mining Company, a Corporation, Debtors, and SECURITIES AND EXCHANGE COMMISSION,

Appellees.

### ORDER ALLOWING APPEAL

Upon consideration of the petition of Charles I. Rosin filed July 25, 1949, for allowance of an appeal herein, and of the objections thereto of James P. Hart, trustee, and good cause therefor appearing,

It Is Ordered that an appeal be, and hereby is allowed Charles I. Rosin herein from the orders of

the United States District Court for the District of Nevada.

It Is Further Ordered that said appellant file with the clerk of the said District Court, and serve upon counsel for appellees, a statement of points to be urged on appeal and a designation of any additional portions of the record and proceedings in the District Court—other than those already transmitted on his petition for allowance of appeal—which he deems material to the consideration of such points on appeal, and that counsel for appellees may file within ten days thereafter a designation of other additional material to be included within the transcript on appeal.

Upon the certification to this court by the clerk of the District Court of such supplemental material, briefs are to be filed by respective parties as provided by Rule 20 of this court, appellant's opening brief being due thirty days after the filing of the complete transcript.



In the United States Court of Appeals  
for the Ninth Circuit

No. 12,331

CHARLES I. ROSIN,

Appellant,

vs.

J. P. HART, et al.,

Appellees.

STATEMENT OF POINTS TO BE  
URGED ON APPEAL

I.

This Court, and the District Court of the United States have jurisdiction of this proceeding under authority of the Bankruptcy Act of the United States, as approved by the President on June 22, 1938.

II.

A United States District Court in a Bankruptcy proceeding should allow compensation for services rendered by Trustees, Receivers, and their attorneys in a prior proceeding involving the same subject-matter, and that the United States District Court erred in refusing to make allowance for such services.

III.

That the United States District Court erred in its Findings of Fact, Conclusions of Law, and Order thereon, as applicable to the Appellant herein, and as set out in Paragraphs XX to XXX, inclusive, of the Findings of Fact.

## IV.

That the Findings of Fact, Conclusions of Law, and Order thereon, are not supported by the evidence, and are inconsistent with and contrary to the evidence.

## V.

That the Order made on Appellant's Petition for fees is inconsistent with, not comparable to, and contrary to, the basis of computation on fees allowed to other attorneys for comparable services of comparable benefit to the estate, and are not at all related in any manner to the basis of computation on claims allowed for fees for services in the prior proceeding in the California State Court, or in the United States District Court.

## VI.

That the Findings of Fact, Conclusions of Law, and Order are erroneous, in that it disregards the evidence with reference to office expense incurred by Appellant in maintaining an office for the transaction of business of the Trustees, as well as Appellant's business as Attorney for the Trustee.

Respectfully submitted,

/s/ CHAS. I. ROSIN,  
Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed August 29, 1949.

[Title of Court of Appeals and Cause.]

REQUEST FOR AND DESIGNATION OF  
RECORD TO BE PRINTED

Appellant makes the following designation of Record in the above entitled matter, which he desired to have printed, and requests that the Clerk of this Court arrange for the printing thereof:

All of the following are parts of Volume I of the Record as now in the Office of the Clerk of this Court:

(1) Petition for Allowance of Fees to Attorney for State Trustees;

(2) Supplement to Petition for Allowance of Fees to Attorney for State Trustees;

(3) Findings of Fact, Conclusions of Law, and Order thereon on Applications for Compensation;

(4) Order of the Superior Court of the State of California in and for the County of Mariposa, dated May 9, 1938, appointing Trustees (Exhibit I);

(5) Order of the Superior Court of the State of California in and for the County of Mariposa, dated September 5, 1938, appointing Appellant as Attorney for Trustees (Exhibit IV);

(6) Letter from Judge Trabucco to Appellant, dated May 25, 1938 (Exhibit II).

/s/ CHAS. I. ROSIN,

Appellant in Propria Persona.

Affidavit of service by mail attached.

[Endorsed]: Filed November 8, 1949.

